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12
13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**

16 REBEKAH BAHARESTAN and JENA
17 MCINTYRE, on behalf of themselves and all
others similarly situated,

18 Plaintiffs,

19 v.

20 VENUS LABORATORIES, INC., dba EARTH
21 FRIENDLY PRODUCTS, INC.,

22 Defendant.

Case No. 3:15-cv-03578-EDL

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS SETTLEMENT
AGREEMENT, CONDITIONALLY
CERTIFYING THE SETTLEMENT
CLASS, PROVIDING FOR NOTICE,
AND SCHEDULING ORDER**

Judge: Hon. Elizabeth D. Laporte

1 WHEREAS, Plaintiffs in the action entitled, *Baharestan, et al. v. Venus Laboratories, Inc.*
2 *dba Earth Friendly Products, Inc.*, 3:15-cv-03578 EDL (N.D. Cal.) and Venus Laboratories, Inc.,
3 have entered into a Class Action Settlement Agreement¹, filed _____, after
4 arm's-length Settlement discussions;

5 WHEREAS, the Court has received and considered the Settlement, including the
6 accompanying exhibits;

7 WHEREAS, the Parties have made an application for an Order preliminarily approving the
8 Settlement of this Action, and for its dismissal with prejudice upon the terms and conditions set
9 forth in the Stipulation;

10 WHEREAS, the Court has reviewed the Parties' application for such Order, and has found
11 good cause for same.

12 NOW, THEREFORE, IT IS HEREBY ORDERED:

13 **A. The Settlement Class Is Conditionally Certified**

14 1. Pursuant to Federal Rule of Civil Procedure 23, and for Settlement purposes only,
15 the Court hereby certifies the following Class:

16 All persons who, during the Class Period, both resided in the United States and
17 purchased in the United States any of the Earth Friendly Products for their
18 household use or personal consumption and not for resale. Excluded from the
19 Settlement Class are: (a) Venus's board members or executive-level officers,
20 including its attorneys; (b) governmental entities; (c) the Court, the Court's
21 immediate family, and the Court staff; and (d) any person that timely and properly
22 excludes himself or herself from the Settlement Class in accordance with the
procedures approved by the Court.

23 2. With respect to the Class and for Settlement purposes only, the Court preliminarily
24 finds the prerequisites for a class action under Federal Rules of Civil Procedure 23(a) and (b)(3)
25 have been met, including: (a) numerosity; (b) commonality; (c) typicality; (d) adequacy of the
26 _____

27 ¹All capitalized terms herein shall have the same meanings as set forth in the Agreement unless
28 otherwise specifically defined.

Class representatives and Class Counsel; (e) predominance of common questions of fact and law among the Class for purposes of Settlement; and (f) superiority.

3. Pursuant to Federal Rule of Civil Procedure 23, the Court hereby appoints the Plaintiffs in the Action, Rebekah Baharestan and Jena McIntyre the Class representatives.

4. Having considered the factors set forth in Federal Rule of Civil Procedure 23(g)(1), the Court hereby appoints the law firms of Halunen Law and The Lexington Law Group as Class Counsel.

B. The Settlement Is Preliminarily Approved and Final Approval Schedule Set

5. The Court hereby preliminarily approves the Agreement and the terms and conditions of Settlement set forth therein, subject to further consideration at the Final Approval Hearing described below.

6. The Court has conducted a preliminary assessment of the fairness, reasonableness, and adequacy of the Agreement, and hereby finds that the Settlement falls within the range of reasonableness meriting possible final approval. The Court therefore preliminarily approves the proposed Settlement as set forth in the Agreement.

7. Pursuant to Federal Rule of Civil Procedure 23(e), the Court will hold a Final Approval Hearing on _____, at _____ a.m./p.m., in the Courtroom of the Honorable Elizabeth D. Laporte, United States District Court for the Northern District of California, 4450 Golden Gate Avenue, San Francisco, CA 94102, for the following purposes:

- a. to finally determine whether the Class meets all applicable requirements of Federal Rule of Civil Procedure 23 and, thus, should be certified for purposes of effectuating the Settlement;

- b. to determine whether the proposed Settlement of the Action on the terms and conditions provided for in the Agreement is fair, reasonable and adequate and should be finally approved by the Court;
- c. to consider the application of Class Counsel for an award of Attorneys' Fees and Expenses, as provided for under the Agreement;
- d. to consider the applications of Plaintiffs for Class representative incentive awards, as provided for under the Agreement;
- e. to consider whether the Court should enter the [Proposed] Final Settlement Order and Judgment;
- f. to consider whether the release of the Released Claims as set forth in the Agreement should be provided; and
- g. to rule upon such other matters as the Court may deem just and appropriate.

8. The Court may adjourn the Final Approval Hearing and later reconvene such hearing without further notice to Settlement Class Members.

9. The Parties may further modify the Agreement prior to the Final Approval Hearing so long as such modifications do not materially change the terms of the Settlement provided thereunder. The Court may approve the Agreement with such modifications as may be agreed to by the Parties, if appropriate, without further notice to Settlement Class Members.

C. The Court Approves the Form and Method of Class Notice

10. **Class Notice.** The proposed Class Notice, Summary Settlement Notice, the notice methodology described in the Settlement Agreement and in the Affidavit of the Notice Administrator are hereby approved.

1 a. Pursuant to the Settlement Agreement, the Court appoints Dahl
2 Administration, LLC, to be the Notice Administrator and Settlement Administrator to help
3 implement the terms of the Settlement Agreement.

4 b. Not later than five (5) days after the entry of the Preliminary Approval
5 Order, the Notice Administrator shall establish an Internet website that will inform Settlement
6 Class Members of the terms of the Settlement Agreement, their rights, dates and deadlines, and
7 related information. The website shall include, in Portable Document Format (“PDF”), materials
8 agreed upon by the Parties and as further ordered by this Court.

9 c. Not later than five (5) days after the entry of the Preliminary Approval
10 Order, the Notice Administrator shall establish a toll-free telephone number that will provide
11 Settlement-related information to Settlement Class Members.

12 d. Beginning not later than twenty-one (21) days after the entry of the
13 Preliminary Approval Order, and subject to the requirements of the Preliminary Approval Order,
14 the Settlement Agreement, and the Affidavit of the Notice Administrator, the Notice
15 Administrator shall commence sending the Class Notice by U.S. mail to each reasonably
16 identifiable Settlement Class Member’s last known address, reasonably obtainable from Venus,
17 which addresses shall be provided to the Notice Administrator by Venus, no later than ten (10)
18 business day after the day of entry of the Preliminary Approval Order, subject to the existence of
19 such information. The Notice Administrator shall: (a) re-mail any Class Notices returned by the
20 U.S. Postal Service with a forwarding address that are received by the Notice Administrator within
21 ten (10) days of receipt of the returned Class Notices that contain a forwarding address, and (b) by
22 itself or using one or more address research firms, as soon as practicable following receipt of any
23 returned Class Notices that do not include a forwarding address, research any such returned mail
24 for better addresses and promptly mail copies of the Class Notices to the addresses so found.
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1 e. During the Claim Period, the Notice Administrator shall also publish the
2 Summary Settlement Notice as described in the Affidavit of the Notice Administrator and in such
3 additional newspapers, magazines, and/or other media outlets as shall be agreed upon by the
4 Parties.

5 f. The Notice Administrator shall timely disseminate any remaining notice, as
6 stated in the Settlement Agreement and/or the Affidavit of the Notice Administrator.

7 g. Not later than ten (10) calendar days before the date of the Fairness
8 Hearing, the Notice Administrator shall file with the Court: (a) a list of those persons who have
9 opted out or excluded themselves from the Settlement; (b) the details outlining the scope,
10 methods, and results of the notice program; and (c) compliance with the obligation to give notice
11 to each appropriate State and Federal official, as specified in 28 U.S.C. § 1715, and any other
12 applicable statute, law or rule, including, but not limited to, the Due Process Clause of the United
13 States Constitution.
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15 11. **Findings Concerning Notice.** The Court finds that the form, content, and method
16 of giving notice to the Class as described in Paragraph 10 of this Order: (a) will constitute the best
17 practicable notice; (b) are reasonably calculated, under the circumstances, to apprise the
18 Settlement Class Members of the pendency of the Action, the terms of the Proposed Settlement,
19 and their rights under the Proposed Settlement, including but not limited to their rights to object to
20 or exclude themselves from the Proposed Settlement and other rights under the terms of the
21 Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all
22 Settlement Class Members and other persons entitled to receive notice; and (d) meet all applicable
23 requirements of law, including but not limited to 28 U.S.C. § 1715, Rule 23(c) and (e), and the
24 Due Process Clause(s) of the United States Constitution. The Court further finds that all of the
25 notices are written in simple terminology, are readily understandable by Settlement Class
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1 Members, and are materially consistent with the Federal Judicial Center's illustrative class action
2 notices.

3 12. **Participation in Settlement.** The Court approves the Parties' proposed Claim
4 Form. Any Class Member who wishes to participate in the settlement shall complete a Claim
5 Form in accordance with the instructions contained therein and submit it to the Claim
6 Administrator no later than [] days prior to the date of the Final Approval Hearing, which date
7 will be specifically identified in the Claim Form. Such deadline may be further extended without
8 notice to the Class by written agreement of the Parties.

9 13. The Claim Administrator shall have the authority to accept or reject claims in
10 accordance with the Stipulation, including the Claims Administration Protocols.

11 14. Any Class Member may enter an appearance in the Action, at his or her own
12 expense, individually or through counsel who is qualified to appear in the jurisdiction. All Class
13 Members who do not enter an appearance will be represented by Class Counsel.

14 15. **Exclusion from Settlement Class.** Any Settlement Class Member who wishes to
15 be excluded from the Class may elect to opt out of the monetary portion of the Class Settlement,
16 relinquishing his or her rights to monetary compensation under this Agreement. Settlement Class
17 Members who opt out of the Settlement will not release their claims for damages that accrued
18 during the Class Period. Settlement Class Members wishing to opt out of the Settlement must
19 send to the Class Action Settlement Administrator by U.S. mail a personally signed letter
20 including their name and address and providing a clear statement communicating that they elect to
21 be excluded from the Settlement Class. Any request for exclusion or opt-out must be postmarked
22 on or before the opt-out deadline specified in this Preliminary Approval Order. The date of the
23 postmark on the return-mailing envelope shall be the exclusive means used to determine whether a
24 request for exclusion has been timely submitted. The Class Action Settlement Administrator shall
25 forward copies of any written requests for exclusion to Class Counsel and Venus's Counsel. The
26 Class Action Settlement Administrator shall file a list reflecting all requests for exclusion with the
27 Court no later than ten (10) calendar days before the Fairness Hearing. Any potential Settlement
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1 Class Member who does not file a timely written request for exclusion shall be bound by all
 2 subsequent proceedings, orders, and judgments, including, but not limited to, the release in the
 3 Settlement Agreement, even if he or she has litigation pending or subsequently initiates litigation
 4 against Venus relating to the claims and transactions released in this Action.

5 15. **Objections and Appearances.** Any Settlement Class Member or counsel hired at
 6 any Settlement Class Member's own expense who complies with the requirements of this
 7 paragraph may object to any aspect of the Proposed Settlement. Settlement Class Members may
 8 object either on their own or through an attorney retained at their own expense. Any Settlement
 9 Class Member filing an objection may be required to sit for deposition regarding the objection.
 10 Any Settlement Class Member who fails to comply with the provisions of this paragraph 13 shall
 11 waive and forfeit any and all rights he or she may have to object, and shall be bound by all terms
 12 of the Settlement Agreement, this Order, and by all proceedings, orders, and judgments, including,
 13 but not limited to, the release in the Settlement Agreement in the Action.

14 a. Any Settlement Class Member who has not filed a timely written request
 15 for exclusion and who wishes to object to the fairness, reasonableness, or adequacy of the
 16 Settlement Agreement, the proposed Settlement, the award of Attorneys' Fees and Expenses, or
 17 the Incentive Awards to Plaintiffs, must (i) file the objection with the Court, no later than [30 days
 18 before the Fairness Hearing] _____, or as the Court may otherwise direct; and (ii)
 19 deliver a copy of the objection to the Class Counsel and Venus's Counsel and to the Settlement
 20 Administrator identified in the Class Notice.

21 b. The written objection must be in writing, signed by the Settlement Class
 22 Member (and his or her attorney, if individually represented) and shall contain information,
 23 including but not limited to, address and phone number, sufficient to identify and contact the
 24 objecting Settlement Class Member (or his or her individually-hired attorney, if any), as well as a
 25 clear and concise statement of the Settlement Class Member's objection, the facts supporting the
 26 objection, and the legal grounds on which the objection is based. Any objection shall include
 27 documents sufficient to establish the basis for the objector's standing as a Settlement Class
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1 Member, such as (i) a declaration signed by the objector under penalty of perjury, with language
 2 similar to that included in the Claim Form that the Settlement Class Member purchased at least
 3 one Earth Friendly Product during the Class Period of January 23, 2011 to the date of Preliminary
 4 Approval; or (ii) receipt(s) reflecting such purchase(s). Class Counsel and Venus shall have the
 5 right to obtain reasonable discovery from any objecting class member.

6 c. Any Settlement Class Member, including Settlement Class Members who
 7 file and serve a written objection, as described above, may appear at the Fairness Hearing, either
 8 in person or through personal counsel hired at the Settlement Class Member's expense, to object
 9 to or comment on the fairness, reasonableness, or adequacy of the Settlement Agreement or
 10 proposed Settlement, or to the award of Attorneys' Fees and Expenses or the Incentive Awards to
 11 the Plaintiffs. Settlement Class Members who intend to make an appearance at the Fairness
 12 Hearing must file a Notice of Intention to Appear with the Court, listing the name, address and
 13 phone number of the attorney, if any who will appear, no later than [15 days before the Fairness
 14 Hearing] _____, or as the Court may otherwise direct.

15 d. Class Counsel and Venus shall have the right to respond to any objection no
 16 later [than seven (7) days prior to the Fairness Hearing] _____, or as the Court may
 17 otherwise direct. The Party so responding shall file a copy of the response with the Court, and
 18 shall serve a copy, by regular mail, hand or overnight delivery, to the objecting Settlement Class
 19 Member or to the individually-hired attorney for the objecting Settlement Class Member; to all
 20 Class Counsel; and to Venus's Counsel.

21 16. **Disclosures.** The Settlement Administrator, Venus's Counsel, and Class Counsel
 22 shall promptly furnish to each other copies of any and all objections or written requests for
 23 exclusion that might come into their possession.

24 17. **Termination of Settlement.** This Order shall become null and void and shall not
 25 prejudice the rights of the Parties, all of whom shall be restored to their respective positions
 26 existing immediately before this Court entered this Order, if: (a) the Settlement is not finally
 27 approved by the Court, or does not become final, pursuant to the terms of the Settlement
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1 Agreement; (b) the Settlement is terminated in accordance with the Settlement Agreement; or (c)
 2 the Settlement does not become effective as required by the terms of the Settlement Agreement for
 3 any other reason. In such event, the Settlement and Settlement Agreement shall become null and
 4 void and be of no further force and effect, and neither the Settlement Agreement nor the Court's
 5 orders, including this Order, relating to the Settlement shall be used or referred to for any purpose.

6 18. **Effect of Settlement Agreement and Order.** Plaintiffs' Counsel, on behalf of the
 7 Settlement Class, and Venus entered into the Settlement Agreement solely for the purpose of
 8 compromising and settling disputed claims. This Order shall be of no force or effect if the
 9 Settlement does not become final and shall not be construed or used as an admission, concession,
 10 or declaration by or against Venus of any fault, wrongdoing, breach, or liability. The Settlement
 11 Agreement, the documents relating to the Settlement Agreement, and this Order are not, and
 12 should not in any event be (a) construed, deemed, offered or received as evidence of a
 13 presumption, concession or admission on the part of Plaintiffs, Venus, any member of the
 14 Settlement Class or any other person; or (b) offered or received as evidence of a presumption,
 15 concession or admission by any person of any liability, fault, or wrongdoing, or that the claims in
 16 the Action lack merit or that the relief requested is inappropriate, improper, or unavailable for any
 17 purpose in any judicial or administrative proceeding, whether in law or in equity.

18 19. **Stay of Deadlines.** Effective immediately, any deadlines, except any matters
 19 necessary to implement, advance, or further approval of the Settlement Agreement or settlement
 20 process, are stayed pending the final Fairness Hearing and the issuance of a final order and
 21 judgment in this Action,

22 20. In addition, pending the final Fairness Hearing and the issuance of a final order and
 23 judgment in this Action, all members of the Settlement Class and their legally authorized
 24 representatives are hereby preliminarily enjoined from filing, commencing, prosecuting,
 25 maintaining, intervening in, participating in (as class members or otherwise), or receiving any
 26 benefits from any other lawsuit, arbitration, or administrative, regulatory, or other proceeding or
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1 order in any jurisdiction arising out of or relating to the Earth Friendly Products or the facts and
2 circumstances at issue in the Action.

3 21. Additionally, pending the final Fairness Hearing and issuance of a final order and
4 judgment in this Action, all members of the Settlement Class and their legally authorized
5 representatives are hereby preliminary enjoined from filing, commencing, prosecuting, or
6 maintaining any other lawsuit as a class action (including by seeking to amend a pending
7 complaint to include class allegations, or by seeking class certification in a pending action in any
8 jurisdiction), on behalf of members of the Settlement Class, if such other class action is based on
9 or relates to Earth Friendly Products.

10 22. **Continuance of Hearing.** The Court reserves the right to adjourn or continue the
11 Fairness Hearing without further written notice.

12 23. The Court sets the following schedule for the Fairness Hearing and the actions
13 which must precede it:

14 a. Plaintiffs shall file their Motion for Final Approval of the Settlement by no
15 later than [44 days before Fairness Hearing] _____.

16 b. Plaintiffs shall file their Motion for Attorneys' Fees, Costs and Expenses,
17 and Motion for Incentive Awards by no later than [44 days before Fairness Hearing]
18 _____.

19 c. Settlement Class Members must file any objections to the Settlement and
20 the Motion for Attorneys' Fees, Costs, and Expenses, and/or the Motion for Incentive Awards by
21 no later than [30 days before Fairness Hearing] _____.

22 d. Settlement Class Members must exclude themselves, or opt-out, from the
23 Settlement by no later than [30 days before Fairness Hearing]
24 _____.

25 e. Settlement Class Members who intend to appear at the Final Fairness
26 Hearing must file a Notice of Intention to Appear at the Final Fairness Hearing by no later than
27 [15 days before Fairness Hearing] _____.

1 f. The Notice Administrator shall file: (a) a list of those persons who have
2 opted out or excluded themselves from the Settlement; (b) the details outlining the scope,
3 methods, and results of the notice program; and (c) compliance with the obligation to give notice
4 to each appropriate State and Federal official, as specified in 28 U.S.C. § 1715, and any other
5 applicable statute, law or rule, including, but not limited to, the Due Process Clause of the United
6 States Constitution by no later than [10 days before Fairness Hearing]
7 _____.

8 g. Class Counsel and Venus shall have the right to respond to any objection no
9 later than [seven (7) days prior to the Fairness Hearing] _____.

10 h. The Fairness Hearing will take place on [100 days from date of Preliminary
11 Approval] _____ at __:__ .m. at the United States District Court for the
12 Northern District of California, in Courtroom ____.

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15 **IT IS SO ORDERED:**

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18 DATED: _____

19 THE HONORABLE ELIZABETH D. LAPORTE
20 UNITED STATES MAGISTRATE JUDGE
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